

Appl. No. 09/403,192  
Amdt. dated August 5, 2005  
Reply to Final Office Action of May 5, 2005

### REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks. Claims 14, 17-20, 23, 24, 27-32, and 35-37 are pending in the subject application, with amended Claim 14 and allowable Claims 35-37 being in independent format. This Amendment and Reply to the Final Office Action, mailed May 5, 2005, is being filed within the 3-month shortened statutory period.

Applicant notes that rejection of Claims 14, 17, 20, 23, 24, and 27 under 35 U.S.C. §102(b) as being anticipated by *Murphy et al.* (U.S. Patent No. 5,658,851) will not be maintained and that objections to Claims 25, 26, and 34 have been canceled. Applicant also notes that Claims 35-37 are allowable.

Claim 14 has been amended to recite a crop protection composition of active compounds having foliar or systemic action, comprising the active compounds biscalbamate, silicic acid, and ethoxylated tridecanol having 5 to 13 ethoxy units, wherein the composition is formulated as a water-based suspension concentrate, and is substantially free of oil.

It is urged that support for all the above amendments may be found throughout the specification as originally filed and that none of the amendments constitute new matter or raise new issues for consideration.

### *Claim Rejections – 35 U.S.C. §103(a)*

Rejections of Claims 18, 19, and 28-32 under 35 U.S.C. §103(a) as being unpatentable over *Murphy et al.* as applied to Claims 14, 15, 17, 20, 23, 24, 27, and 33 are maintained. This rejection is respectfully traversed, particularly in view of the above amendments and the following remarks.

The Examiner states that he disagrees with applicants' argument provided in the Amendment and Reply dated January 3, 2005, where applicants argued that *Murphy et al.* does not teach a crop protection composition of active compounds having foliar or systemic action, formulated as a water-based suspension concentrate. The Examiner reasons that the specification of the subject application states that applicants' claimed composition can comprise an oil.

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Applicants believe that the "ethoxylated castor oil", as disclosed on in table 7, page 16 of the applicants' specification, in terms of its chemical structure, is not an "oil", but rather a surfactant or wetting agent, as described on page 4, 2nd paragraph, lines 1-7 of the specification. Applicants further submit that a "castor oil" contains mainly of the triglyceride of ricinolic acid, which is a fatty acid, and therefore, is rather non-polar and belongs to the chemical group of fats or oils. However, an "ethoxylated castor oil" contains ethoxy groups introduced via ethoxylation, and therefore, is rather polar and does not have the characteristics of an oil.


Accordingly, Claim 14 has been amended to recite a crop protection composition formulated as a water-based suspension concentrate, and being substantially free of oil. *Murphy et al.* fails to disclose an aqueous suspension concentrate that is substantially free of oil. *Murphy et al.* teaches the use of a carrier oil in which the active substance (herbicide) is dissolved or dispersed. Therefore, the carrier oils described by *Murphy et al.* cannot be used for formulating the aqueous suspension concentrate that is substantially free of oil as taught by applicants' invention. Accordingly, Claim 14 cannot be obvious in view of *Murphy et al.*

It is urged that *Murphy et al.* would not render Claims 14, 17-20, 23, 24, and 27-32 obvious to one of skill in the art, and that the present rejection of the claims under 35 U.S.C. §103(a) may be properly withdrawn.

#### Conclusion

In view of the above amendments and remarks, applicants believe that they have addressed all of Examiner's concerns. Early consideration and allowance of all the pending claims is respectfully requested.

Respectfully submitted,

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Date: August 5, 2005  
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